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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/762,392	01/22/2004	Jeffrey A. Blansit	L-0170.81	4873

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EXAMINER	
PERRIN, JOSEPH L	
ART UNIT	PAPER NUMBER
1746	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/28/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.	Applicant(s)	
	10/762,392	BLANSIT ET AL.	
	Examiner	Art Unit	
	Joseph L. Perrin, Ph.D.	1746	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *04 January 2007*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-24* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-24* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 04 January 2007 have been fully considered but they are not persuasive.

2. The Examiner notes that independent claims 1 and 15 have been broadened in scope by the removal of structural limitation(s).

3. Regarding claim 1, applicant argues against the Examiner's assertion that "Poindexter discloses an apparatus for periodically cleaning a water collection tray of a potable water collection system" by admitting the Poindexter system is a potable water collection coil cleaning apparatus "whereby the spray nozzle 42 sprays sanitizing fluids within the hood enclosure 11 to cleans the outer surfaces of the cooling coils 14, the inner surfaces of the hood enclosure 11, and the collection tray 20" (emphasis added). See page 8 of the response. This is not persuasive because such argument fails to distinguish the structural differences between the prior art and the claimed invention, but rather appear to support the Examiner's position. Clearly, the apparatus of Poindexter is fully capable of performing the intended use as claimed of spraying sanitizing fluid onto the drip tray/collection tray.

4. Applicant further argues the "use" of Poindexter compared to the use of the claimed invention. This is not persuasive because the *apparatus* is being claimed and not the *method of using* the apparatus. Claims directed to apparatus must be distinguished from the prior art in terms of structure rather than function. *In re Danly*, 263 F.2d 844, 847, 120 USPQ 528, 531 (CCPA 1959). "[A]pparatus claims cover what

a device is, not what a device does." *Hewlett-Packard Co. v. Bausch & Lomb Inc.*, 909 F.2d 1464, 1469, 15 USPQ2d 1525, 1528 (Fed. Cir. 1990). (emphasis in original) Both the instant invention and the apparatus disclosed in Poindexter disclose sanitizing trays used in potable liquid dispensing systems. Arguably, one could take the position that the tray of Poindexter reads on the claimed drip tray since Poindexter discloses sanitizing a tray used to collect potable drip in an apparatus which dispenses potable liquid.

5. Regarding applicant's argument that the location of the spray manifold being in the drip tray compared to the spray manifold of Poindexter being above the tray, this is not persuasive because as long as the spray manifold is capable of spraying the components including the tray the rearrangement of the spray manifold location in proximity to the tray would have been obvious to one having ordinary skill in the art at the time the invention was made since it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 86 USPQ 70.

6. Applicant further argues that the relocation of the spray manifold "is possible, but not optimal", this is not persuasive because absent secondary considerations such as unexpected results, rearranging parts to optimize cleaning would have been an obvious modification to one having ordinary skill in the art. Furthermore, regarding the apparatus of Poindexter, Poindexter clearly discloses spraying and sanitizing the tray. Simply rearranging the spray manifold closer to the tray to optimize coverage is considered well within the level and knowledge generally available to one having ordinary skill in the art.

7. Regarding applicant's apparent argument that using Poindexter's apparatus to clean a drip tray would render Poindexter's device inoperable because Poindexter cleans cooling coils, a prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention. *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984). In the instant case, Poindexter expressly discloses an apparatus for sanitizing a drip tray by spraying. Whether or not Poindexter is used to clean other components does not negate the fact that Poindexter discloses apparatus for sanitizing a drip tray by spraying sanitizing liquid.

8. Regarding claims 2-14, applicant argues that these claims are patentable because the claim from which they depend is patentable (i.e. claim 1). This is not persuasive because claim 1 is not patentable for reasons indicated above.

9. Regarding the combination of Poindexter and Lindner, applicant argues against the combination alleging that the cooling coils of Poindexter would render the combination inoperative and that such combination "teaches away". This is confusing given that the cooling coils of Poindexter are not being combined in the rejection. A prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention. *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984). In the instant case, the cooling coils of Poindexter are not being combined with Lindner, but rather the sanitizing spray manifold which cleans the drip tray of Poindexter, and such combination is deemed to render obvious applicant's claimed invention. As indicated in the rejection, Poindexter discloses spraying, *inter alia*, a drip

tray with sanitizing liquid via a spray manifold. Lindner discloses a drip tray in a product dispenser. Thus, the combination of providing a spray manifold as disclosed in Poindexter as being used to sanitize a drip tray, with the drip tray in the product dispenser of Lindler for the purpose of sanitizing a drip tray in a product dispenser would have been obvious to one having ordinary skill in the art.

10. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988)and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Poindexter provides explicit teaching of spraying sanitizing fluid on a drip tray via a spray manifold for the purpose of sanitizing the drip tray. Thus, providing the sanitizing spray manifold of Poindexter to sanitize the drip tray of Lindner for the purpose of sanitizing a drip tray would have been an obvious modification.

11. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a

reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

12. Regarding claims 16-18, 21 & 23, applicant argues that these claims are patentable because the claim from which they depend is patentable (i.e. claim 15). This is not persuasive because claim 15 is not patentable for reasons indicated above.

13. Regarding claims 19-20, 22 & 24, the Examiner notes that no arguments were presented for these claims. Accordingly, these claims remain rejected for at least reasons of record.

Claim Rejections - 35 USC § 103

14. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

15. Claims 1-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Poindexter (5,398,517).

Poindexter discloses an apparatus for periodically cleaning water collection tray of potable water collection system. The reference discloses the valve 88 having an inlet and outlet, a pump 82 having an inlet port 84 and outlet port 86, and the spray manifolds 40, 42, 44 (see Figs 2A, 2B, 3A, 3B, and 4). The reference discloses the sanitizing fluid source and the controller 90 controlling the pump and valve to spray sanitizing fluid via the spray manifolds to clean the tray. See the abstract, col. 1, lines 30-33, col. 2, lines 43-57, col. 4, lines 20-50, col. 5, lines 6-53, the claims and Figs 2-4.

Poindexter does not disclose the drip tray of a product dispenser, the valve switch, the pump switch, and the mixing union as claimed.

It would have been obvious for one skilled in the art to use the cleaning system taught by Poindexter to sanitize the drip tray of a product dispenser, because the drip tray and the collection tray taught by Poindexter are functionally equivalent, because both trays are used to collect the drip from the fluid dispensing apparatus. One skilled in the art would have known to use the valve switch and the pump switch to improve the cleaning apparatus. Moreover, it would have been obvious for one skilled in the art to use a mixing unit if using more than one sanitizing fluid.

16. Claims 15-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Poindexter in combination with Lindner (3,942,685).

Poindexter discloses an apparatus for periodically cleaning water collection tray of potable water collection system. The reference discloses the valve 88 having an inlet and outlet, a pump 82 having an inlet port 84 and outlet port 86, and the spray manifolds 40, 42, 44 (see Figs 2A, 2B, 3A, 3B, and 4). The reference discloses the sanitizing fluid source and the controller 90 controlling the pump and valve to spray sanitizing fluid via the spray manifolds to clean the tray. See the abstract, col. 1, lines 30-33, col. 2, lines 43-57, col. 4, lines 20-50, col. 5, lines 6-53, the claims and Figs 2-4.

Poindexter does not disclose the product dispenser, the valve switch, the pump switch, the drip tray sanitizing system is internal to the beverage dispenser, the product dispenser, and the mixing union as claimed.

Lindner discloses a product dispenser comprising a housing including a controller and drip tray disposed on the housing. See Fig. 1, col. 1, lines 55-66, col. 2, lines 47-48-50, col. 8, lines 35-66. Lindner does not teach drip tray sanitizing system as claimed.

It would have been obvious for one skilled in the art to use the cleaning system taught by Poindexter in the product dispenser taught by Lindner to obtain the claimed product dispenser, because the drip tray of Lindner and the collection tray taught by Poindexter are functionally equivalent. One skilled in the art would have known to use the valve switch and the pump switch to improve the cleaning apparatus. Moreover, it would have been obvious for one skilled in the art to use a mixing unit if using more than one sanitizing fluid.

Conclusion

17. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

18. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

19. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph L. Perrin, Ph.D. whose telephone number is (571)272-1305. The examiner can normally be reached on M-F 7:00-4:30, except alternate Fridays.

20. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael E. Barr can be reached on (571)272-1414. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

21. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Joseph L. Perrin, Ph.D.
Primary Examiner
Art Unit 1746

JLP